

## Mao Exhibit 19

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Yvonne Gonzalez Rogers, Judge

CHASOM BROWN, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	
VS.	)	<b>NO. CV 20-03664-YGR</b>
	)	
GOOGLE LLC,	)	
	)	
Defendants.	)	
_____	)	

Oakland, California  
Wednesday, November 29, 2023

**TRANSCRIPT OF PROCEEDINGS**

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Wednesday - November 29, 2023

8:55 a.m.

P R O C E E D I N G S

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**THE CLERK:** Good morning, everyone. Calling the matter of CV 20-3664-YGR, Brown, et al. vs. Google LLC, et al.

Parties, please step forward and state your appearances for the record, starting with the plaintiff.

**MR. BOIES:** Good morning, Your Honor. David Boies of Boies Schiller & Flexner representing the plaintiff.

**THE COURT:** Good morning, Mr. Boies. All right. So let's go around so I get to you know you all better. I think I know most of you, but we'll see.

**MS. BONN:** Good morning, Your Honor. Amanda Bonn with Susman Godfrey for the plaintiffs.

**THE COURT:** Good morning. Why don't you all just line up here so we're not waiting for you to get to the mic.

**MR. FRAWLEY:** Good morning, Your Honor. Alexander Frawley from Susman Godfrey for the plaintiffs.

**THE COURT:** Good morning.

**MR. LEE:** Good morning, Your Honor. James Lee, Boies Schiller Flexner, for the plaintiffs.

**THE COURT:** Yes, Mr. Lee.

**MR. MAO:** Good morning, Your Honor. Mark Mao with Boies Schiller Flexner the plaintiffs.

1 they have all the document. We've requested those documents.  
2 They refused to produce them to us.

3 There is a motion to compel pending on that, and that's  
4 sort of been the holdup because what we're asking for is  
5 produce the documents. Let's take his deposition, and then we  
6 can all decide what's what and what's not what.

7 And so far Google has had a hundred days to respond to our  
8 disclosure. They refused to pull any documents. We know  
9 they've collected them, but they refused to turn them over to  
10 us, and they refused to have him sit for deposition. I think  
11 that would clarify a lot of the issues --

12 **THE COURT:** How can they refuse to let him sit for  
13 deposition?

14 **MR. LEE:** We've offered him for deposition, and they  
15 won't notice him. Instead, they are moving to strike him so  
16 that he could never testify.

17 I think we have to do this in stages. So if they were to  
18 produce the documents and then they could take his deposition,  
19 I think we could submit to Your Honor briefing on it. It could  
20 be very short. We'll attach the deposition. And then  
21 Your Honor can decide, you know, on balance whether -- whether  
22 Mr. Lemoine's testimony is going to be meaningful to the jury.  
23 We think it's going to be very, very meaningful to the jury.

24 And I can touch on some of the relevance because you had  
25 asked about that if it would be helpful for the Court.

1           **THE COURT:** Go ahead.

2           **MR. LEE:** So he's going to testify, in a nutshell,  
3 that Google's AI uses private browsing data across its  
4 services, including Chrome, and that AI can merge users'  
5 private browsing profiles with their non-private browsing  
6 profiles.

7           The AI also can re-identify users, even when they're in  
8 private browsing mode. The reason why that's important, Judge,  
9 is throughout this litigation, Google has taken the position  
10 that it doesn't do any of those things. So it's highly, highly  
11 relevant.

12           In addition to that, he'll testify how Google forbids  
13 written documentations of these exact practices and that when  
14 he spoke up and others spoke up to raise concerns, they were  
15 silenced. So this is -- these are brand new facts. And he's  
16 the only person that will testify that can talk about these  
17 things.

18           So, you know, candidly, Your Honor, the -- the sideshow  
19 aspects are not going to be anything that we introduced to the  
20 Court. What Google has said is they're going to attack his  
21 credibility; right? They're free to do that on cross. If they  
22 think that's a good use of their time, they're free to do that.

23           And I guess the way I look at it, Judge, is if the cross  
24 on his credibility is so good and he really has nothing to say,  
25 then why are they working so hard to preclude him? Why don't

1 they just turn over the documents and take his deposition. And  
2 then if there is still a question then, I think Your Honor can  
3 decide.

4 **THE COURT:** Mr. Shapiro.

5 **MR. SHAPIRO:** So, Your Honor, I -- this is Exhibit A  
6 or at least as aspect, an important aspect of why we maintain  
7 our position that the late request here is relevant because  
8 what the plaintiffs have asked for is for us -- so I can  
9 represent we've not pulled all of Mr. Lemoine's documents.

10 The plaintiffs have asked us now or in August, right  
11 before our pretrial binders were due, to -- they've declined  
12 our request for a deposition unless we went through and  
13 provided discovery on this former employee who didn't work on  
14 any of the products at issue here, who worked in AI, and then  
15 Search. They've accused us of concealing or trying to hide  
16 this witness, which is absolutely not the case. This person's  
17 name didn't come up in two years of discovery, and it's not  
18 because anybody was hiding anything. It's because what he has  
19 to offer is tangential at best in this case.

20 And on the cross-examination in particular, you heard it  
21 from Mr. Lee a moment ago, they are going to argue that Google  
22 has some culture of retaliation, and so we will be within our  
23 rights and we are going to have use portions of everybody's 18  
24 hours, I guess our 18 hours, to explain why this person is no  
25 longer working at Google.

1           It's not efficient, it's not fair, it's not consistent  
2           with the rules. If -- I'll leave it at that.

3           **THE COURT:** Well, it sounds as if you've got a -- on  
4           the plaintiffs' side, a potential whistleblower who -- who  
5           really, in many ways, guts much of what you say if he's  
6           credible, much of what your client says.

7           And I also have been told that the key people who are  
8           running your operation you're refusing to bring in from Europe,  
9           even though you're a multibillion dollar company.

10          So I don't know. I am not so convinced that I shouldn't  
11          allow him to testify.

12          **MR. SHAPIRO:** Nothing that Mr. Lemoine can testify to  
13          will gut what Google is saying or destroy our defense. We will  
14          win this case whether he testifies or not.

15          **THE COURT:** You have argued that the unauthenticated  
16          information cannot and has not ever been matched with users.  
17          That is the perspective. And that the mere fact that you have  
18          the ability to do it doesn't mean that you have done it.

19          We are not in a position to just trust what Google says.  
20          That's why we have an adversarial process. There are plenty of  
21          corporations who do not always accurately describe what it is  
22          they're doing. That's why we have a trial process.

23          Now, you could be right; you could be wrong. I don't  
24          know. But here I have a proffer that suggests that it can be  
25          done, has been done, and that seems to be directly



1 contradictory to Google's position. That's what I'm hearing.

2 **MR. SHAPIRO:** At the threshold or just to introduce  
3 what I'm about to say, if Your Honor is going to direct us to  
4 have an evidentiary hearing, we will have a hearing, but I want  
5 to clarify a couple of things.

6 No one is asking the jury, no one is asking the Court  
7 simply to trust Google that this joining doesn't occur. There  
8 has been a tremendous amount of discovery, depositions, there  
9 will be expert witnesses, there will be vigorous, I'm sure,  
10 examination and cross-examination of Google witnesses who work  
11 actually on Incognito and on Chrome and beyond and by all of  
12 these things and there has been.

13 I'm looking at Mr. Lemoine's declaration here. The only  
14 thing he says -- I'm tested, but it's in his declaration -- he  
15 says in paragraph 9 of his declaration, which is Document  
16 1042-1 -- "While I worked at Google, Google took the  
17 position" -- I'm -- I would put a dot, dot, dot in here because  
18 I'm skipping to the end of that paragraph -- "that information  
19 inferred about a user through AI was considered data about the  
20 user owned by Google rather than user data owned by the user."  
21 And then he says that he believes later on that Google could  
22 infer certain things about how a user is based on patterns.

23 So, A, I don't think that is some direct whistleblowing in  
24 any way; B, I think in any fairness, if the case is going to go  
25 down that road now, we are going to be arguing about what AI

1 can or can't do, something that has never been an issue in this  
2 case. Then we have a right, just in terms of fundamental  
3 fairness, to put on or bring witnesses of our own to rebut  
4 that, which is going to completely derail the timing of -- of  
5 this trial or leave us unable to -- to actually answer these  
6 Eleventh-hour claims.

7 **THE COURT:** Well, I don't know, because I don't know  
8 exactly what he's going to say. I've only had a proffer.

9 So you're ordered to produce the documents. Now, I can  
10 get into the micromanaging of it, or if it's already briefed in  
11 front of Judge van Keulen, she can do it. Or you can all agree  
12 on what's critical, which, again, I'm not exactly sure that you  
13 will, given your history. And a deposition shall be taken.  
14 And all of that has to happen by December 22nd.

15 **MR. LEE:** Thank you, Your Honor.

16 **THE COURT:** They need documents no later than  
17 December 11th at noon. So figure out what's going to be  
18 produced. I'll let her know.

19 **MR. LEE:** Thank you, Your Honor.

20 **MR. SHAPIRO:** Thank you, Judge.

21 **THE COURT:** Okay. Next issue, 1020. It's the next on  
22 the docket. Plaintiffs Motion in Limine No. 1.

23 Oh, on that last issue, I need a joint notice filed by  
24 December 27th as to whether or not you want an evidentiary  
25 hearing, or at least your respective positions on that topic.